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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jacob Benson, et al.,
10 Plaintiffs,

11 v.

12 Casa De Capri Enterprises LLC, et al.,
13 Defendants.
14

No. CV-18-00006-PHX-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-matter
16 jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Pursuant to
17 Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court determines at any
18 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

19 Defendant Continuing Care Risk Retention Group Incorporated (“Defendant”)
20 removed this action on January 2, 2018 solely on the basis of diversity jurisdiction. (Doc.
21 1.) Diversity jurisdiction exists when there is complete diversity of citizenship between
22 the plaintiffs and the defendants and the amount in controversy exceeds \$75,000, exclusive
23 of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement when “all
24 the persons on one side of it are citizens of different states from all the persons on the other
25 side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

26 Having reviewed the Notice of Removal, the Court finds it is facially deficient
27 because it does not allege the citizenship of any of Plaintiffs. The Notice of Removal states
28 that “Plaintiffs allege to be Arizona residents.” (Doc. 1 ¶ 10.) But the factual allegation

1 that Plaintiffs are *residents* of Arizona does not establish they are *citizens* of Arizona for
2 purposes of establishing diversity jurisdiction. “It has long been settled that residence
3 and citizenship [are] wholly different things within the meaning of the Constitution and the
4 laws defining and regulating the jurisdiction of the . . . courts of the United States; and that
5 a mere averment of residence in a particular state is not an averment of citizenship in that
6 state for the purpose of jurisdiction.” *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905).
7 “To be a citizen of a state, a natural person must first be a citizen of the United States. The
8 natural person’s state citizenship is then determined by her state of domicile, not her state
9 of residence. A person’s domicile is her *permanent* home, where she resides with the
10 intention to remain or to which she intends to return.” *Kanter v. Warner–Lambert Co.*, 265
11 F.3d 853, 858-59 (9th Cir. 2001) (emphasis added) (citations omitted); *see also id.* (“In this
12 case, neither Plaintiffs’ complaint nor [Defendants’] notice of removal made any allegation
13 regarding Plaintiffs’ state citizenship. Since the party asserting diversity jurisdiction bears
14 the burden of proof, [Defendants’] failure to specify Plaintiffs’ state citizenship was fatal
15 to Defendants’ assertion of diversity jurisdiction.”). Thus, an allegation regarding
16 Plaintiffs’ state of residence fails to establish their state of domicile—their permanent
17 home—and has no bearing on the determination of their citizenship for diversity purposes.¹

18 The party seeking to invoke diversity jurisdiction has the burden of
19 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
20 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992). There is a strong
21 presumption against removal jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
22 1992) (“Federal jurisdiction must be rejected if there is any doubt as to the right of removal
23 in the first instance.”).

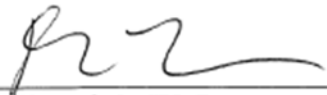
24
25 ¹ Although Casa De Capri Enterprises LLC, which is an Arizona limited liability
26 company, is also named as a defendant in this matter, its presence does not destroy diversity
27 jurisdiction. In *Labertew v. Langemeier*, 846 F.3d 1028 (9th Cir. 2017), the Ninth Circuit
28 held that, in the unique context of a garnishment action that’s been removed from state
court, complete diversity must exist only between the plaintiffs and the party served with
the garnishment notice. *Id.* at 1032. In contrast, a “lack of diversity between” the plaintiffs
and the defendant against whom judgment was entered in state court “is immaterial,
because [the judgment debtor] is a nominal part[y] with nothing at stake.” *Id.* (citation and
internal quotation marks omitted).

1 To cure this pleading deficiency, the Court will require the removing Defendant to
2 file an amended notice of removal that affirmatively states Plaintiffs' citizenship. *Star Ins.*
3 *Co. v. West*, 2010 WL 3715155, *2 (D. Ariz. 2010); *see also NewGen, LLC v. Safe Cig,*
4 *LLC*, 840 F.3d 606, 612 (9th Cir. 2016) ("Courts may permit parties to amend defective
5 allegations of jurisdiction at any stage in the proceedings."). Defendant is advised that its
6 failure to timely comply with this order shall result in the remand of this action without
7 further notice for lack of subject matter jurisdiction.

8 Accordingly, **IT IS ORDERED** that removing Defendant Continuing Care Risk
9 Retention Group Incorporated shall file an amended notice of removal properly stating a
10 jurisdictional basis for this action no later than **May 16, 2019**.

11 **IT IS FURTHER ORDERED** that if Defendant fails to file an amended notice of
12 removal by May 16, 2019, the Clerk of Court shall remand this action to state court on
13 **May 17, 2019**.

14 Dated this 9th day of May, 2019.

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19 Dominic W. Lanza
20 United States District Judge
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